In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.6473 of 2005.
Date of decision:13.9.2006.

Devi Sarup and others.

...Petitioners.

Versus

Smt.Veena Nirwani and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.M.L.Sarin, Senior Advocate with Mr.Hemant Sarin, Advocate for the petitioners.

Mr.Ashok Aggarwal, Senior Advocate with Mr.B.R.Gupta and Mr.Alok Jain, Advocates for respondent No.9.

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Judgment.

S. N. Aggarwal, J.

Banu Mal alias Banu Ram (in short Banu Mal) was the original owner of the suit land. He had executed a Will in favour of his daughter Jeewani alias Munni Devi (in short Munni Devi) on 14.4.1937 for the suit land. But, subsequently, he had executed a Will on 27.3.1943 in favour of Raghbir Singh, respondent No.29 (predecessor in interest of the present petitioners) who was his collateral from the third degree. However, the said Will was for the life time of said

Raghbir Singh and after his death, the property was to revert back to the legal heirs (respondent Nos. 1 to 6) of Munni Devi daughter of Banu Mal. However, Raghbir Singh got mutation No.1427 entered in favour of his wife Smt. Kesho Devi, his son Devi Sarup (petitioner No.1) and son's wife Smt. Maya Devi (petitioner No.2) on 26.2.1954 on the basis of oral Hibbanama (gift) allegedly executed by Banu Mal for the land measuring 835 Kanals 7 Marlas. The said mutation was sanctioned on 2.3.1954. Said Babu Mal died on 14.11.1954.

Respondent Nos.7 to 28 are the subsequent purchasers.

Smt.Veena Nirwani, respondent No.1 (daughter of Munni Devi) filed a civil suit in the year 1989 against Raghbir Singh, his wife Smt.Kesho Devi, his son Devi Sarup (petitioner No.1) and his daughter in law Maya Devi (petitioner No, 2) for declaration, possession and permanent injunction for the suit land and challenged mutation No.1427 dated 2.3.1954 in favour of Kesho Devi, Devi Sarup and Maya Devi on the basis of alleged Hibbanama.

The said suit was decreed and the said mutation was set aside by the Court of Additional Civil Judge (Senior Division), Jagadhri vide judgment and decree dated 30.10.1996. All the subsequent sale deeds executed by these donees were also set aside so also mutation sanctioned on the basis of these sale deeds. The present petitioners,Kusum Lata and Raghbir Singh filed an appeal against the said judgment (CA No.33/254 of 1996) before the District Judge

(Annexure P-3). The said appeal was compromised by the petitioners with Veena Nirwani,respondent No.1 on 25.4.1998. As a result, the appeal was accepted, the petitioners were declared to be the absolute owners of the suit property and the suit of Smt.Veena Nirwani was dismissed as withdrawn. Similar orders were passed in the other connected Civil Appeal Nos.218 of 1996 and 220 of 1996.

Thereafter, Sneh Gupta, respondent No.5 filed an application (No.25 of 2002) on 28.2.2002 challenging the compromise decree dated 25.4.1998 passed by the Court of Additional District Judge. It was alleged by her that she was neither a party to the compromise dated 25.4.1998 nor she had given any authority to Veena Nirwani to enter into a compromise on her behalf with the present petitioners nor any notice was given to her or to her counsel for this compromise before accepting the appeal in terms of the compromise on 25.4.1998. Therefore, the said compromise order dated 25.4.1998 was void and not binding on her. She also filed similar Civil Miscellaneous Application No.41 of of 6.11.2004 in Civil Appeal No.218 of 1996 and Civil Miscellaneous Application No.42 of 6.11.2004 in Civil Appeal No. 220 of 1996.

The said applications were accepted by the Court of Additional District Judge, Jagadhri vide impugned order dated 29.9.2005,the compromise order dated 25.4.1998 was set aside and the said appeals bearing Nos.33 of 1996, 218 of 1996 and 220 of 1996

were ordered to be restored to their original numbers which were ordered to be re-decided on merits.

Aggrieved by the said order dated 29.9.2005, the present petition (C.R. No.6473 of 2005) has been filed by the petitioners. Civil Revision Nos.6588 of 2005 and Civil Revision No.6589 of 2005 are also directed against the same order dated 29.9.2005. Therefore, these are being disposed of by this common judgment. For the sake of convenience, facts are taken from Civil Revision No.6473 of 2005.

There is a long history of litigation on the back of the present petition. The parties have two to three rounds of litigation starting from the Lower Court upto the Hon'ble Supreme Court, but, those facts need not be narrated as those are not relevant for the purpose of this petition.

The first submission made by the learned counsel for the petitioners was that the application filed by Smt. Sneh Gupta,respondent for impugning the compromise order dated 25.4.1998 was not maintainable. Either she should have filed a civil suit challenging the compromise order dated 25.4.1998 or resorted to any other legal remedy available to her. No application in the Court of Additional District Judge, Jagadhri was maintainable and,therefore, impugned order dated 29.9.2005 passed by the said Court is illegal.

This submission is, however, without any merit in view of the unequivocal law laid down by the Hon'ble Supreme Court which

was relied upon by the learned counsel for the respondents. Reference can be made to the judgment of the Hon'ble Supreme Court reported as **Banwari Lal v. Smt. Chando Devi (through L.R.) and another,** A.I.R 1993 S.C.1139. It was held by the Hon'ble Supreme Court as under:-

> "By adding the proviso along with an explanation the purpose and the object of the amending Act, appears to be to compel the party challenging the compromise to question the same before the Court which had recorded the compromise in question. That Court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by R.3A in respect of institution of a separate suit for setting aside a decree on basis of a compromise saying:-
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> "3A. Bar to suit.-No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

This view of law was followed by the Hon'ble Supreme Court later on also. In the subsequent judgment reported as **Dwarka Prasad Agarwal (D) by Lrs. and Anr. Vs. B.D.Agarwal & Ors.,**2003(3) Civil Court Cases, 546 also it was held as under:-

> "Furthermore, a writ court can pass an effective order provided it has jurisdiction in relation thereto. With the enlargement of the power of the court recording compromise in view of the Code of Civil Procedure (Amendment) Act, 1976, the responsibility and duty of the court also has increased. By reason of Order 23 Rule 3 of the Code of Civil Procedure, a party can challenge the legality of the compromise only before the same court and in that view of the matter the court was enjoined with a solemn duty to decide such controversy in a lawful manner. A question as to whether a compromise is void or voidable under the Indian Contract Act or any other law for the time being in force, would have, thus, to be determined by the court itself. Once it is held that the agreement or the compromise was fraudulent,the same per se would be unlawful and the court is required to declare the same as such."

It is,therefore, patently clear that the application filed by Smt. Sneh Gupta respondent for setting aside the compromise order

dated 25.4.1998 was maintainable in that Court which passed that order and there was no legal defect in filing such an application.

The question now before this Court is whether Smt. Sneh Gupta respondent has the right to challenge the compromise order dated 25.4.1998. For its determination, it would be relevant to scrutinize if she had derived any right under the decree dated 30.10.1996 which was set aside by the compromise order dated 25.4.1998.

The perusal of the judgment and decree dated 30.10.1996 (Annexure P-1) passed in the civil suit instituted by Smt. Veena Nirwani (respondent No.1) reveals that it had conferred benefits not only on Smt. Veena Nirwani who had instituted the civil suit but also on her brothers and sisters. Operative part of this judgment reads as under:-

> "As a result of my findings and observations on above issues and more particularly, on issue No.1,2 and 9, the suit of the plaintiff is decreed with cost, against the defendants No.1 to 4 and 11 to 24, with the declaration that mutation No.1427, sanctioned on 2.3.1954 (Ex.P-8) and sale deeds and mutations, subsequent thereto, are illegal, null and void, ineffective, ultra vires and **not binding upon the rights of plaintiff and defendants No.5 to 9 and plaintiff and defendants No.5 to 9 are also entitled to the**

possession of the suit land and defendants No.1 to 4 and 11 to 24 are also restrained from further alienating,transferring or creating any charge on the suit land, in any manner."

Obviously, therefore, by the judgment and decree dated 30.10.1996, the legal rights of Smt. Sneh Gupta respondent were on the same footing as that of Smt.Veena Nirwani who was plaintiff in the suit. The rights of other brothers and sisters of Smt. Veena Nirwani were also the same. They were also parties not only to the civil suit filed by Smt. Veena Nirwani in which the decree dated 30.10.1996 was passed but they were also parties in the Civil Appeal filed by the present petitioners decided by the compromise order on 25.4.1998.

In the face of these facts, the submission of learned counsel for the contesting respondents was that the petitioners had compromised the matter only with Smt.Veena Nirwani in Civil Appeal No.254/33 of 19.12.1996 which was otherwise fixed for a future date in July,1998,but, it was got preponed and compromised on 25.4.1998. Smt. Sneh Gupta and her other brothers and sisters who were respondents like Smt.Veena Nirwani were represented by an Advocate namely Shri Lalit Gupta. Neither any notice was given to him nor he was called. No notice was given to Smt.Sneh Gupta either of the compromise dated 25.4.1998. Smt. Sneh Gupta was not a party to the compromise nor she had authorised Smt.Veena Nirwani to compromise

the matter on her behalf. Therefore, the compromise order dated 25.4.1998 is not binding on her as this compromise took away the rights vested in her by the judgment and decree dated 30.10.1996 even when she was not a participating party in the compromise dated 25.4.1998. Smt. Veena Nirwani had no legal right to compromise for the legal rights of others, particularly when the decree dated 30.10.1996 conferred legal rights on others rather she had colluded with the petitioners. In support of this submission, reliance was placed by the learned counsel for the contesting respondents on the judgment reported as **Bashir Ahmad Versus Masjit Patti Niyamatpur,**(1993-3), Punjab Law Reporter page 58 in which it was held by this Court as under:-

> "It is, therefore, clear from the aforementioned judgments that sub-rule (1) of rule 1 of Order 23, Code of Civil Procedure gives an unqualified right to the plaintiff to withdraw from a suit so long as suit is pending and no vested rights have accrued in favour of the defendant. Once a suit is decided and decree passed, it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and,therefore, at the stage of appeal, though it may be continuation of the suit, plaintiff has no absolute right to withdraw a suit under sub-rule (1) of rule 1 of Order 23, Code of Civil Procedure."

Reference was also made to the judgment of the Hon'ble Supreme Court reported as **R.Rathinavel Chettiar and another Versus V.Sivaraman and others, (**1999) 4 SCC 89. Their Lordships framed the question as under:-

> "The question in the present case is, however, a little different. If the suit has already been decreed or, for that matter, dismissed and a decree has been passed determining the rights of the parties to the suit, which is under challenge in an appeal, can the decree be destroyed by making an application for dismissing the suit as not pressed or unconditionally withdrawing the suit at the appellate stage? It is this question which is to be decided in this appeal".

This question was answered by their Lordships as under:-

> "In view of the above discussion, it comes out that where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. The impugned judgment of the High Court in which a contrary view has been expressed cannot be sustained."

It was, therefore, submitted that since Smt. Sneh Gupta respondent was not a party to the compromise order dated 25.4.1998, therefore, Smt. Veena Nirwani had no authority to extinguish the rights vested in Smt. Sneh Gupta under the judgment and decree dated 30.10.1996.

On the other hand, the submission of learned counsel for the petitioners was that the compromise dated 25.4.1998 was entered into by Smt. Veena Nirwani after consulting all the beneficiaries under the judgment and decree dated 30.10.1996 and with their consent. However, Smt. Sneh Gupta and her brothers and sisters had not become parties to the compromise dated 25.4.1998 because the suit in which decree dated 30.10.1996, was passed was filed only by Smt.Veena Nirwani, respondent. For that reason, the compromise was effected by the petitioners with Smt. Veena Nirwani but she had the authority and consent of her brothers and sisters. Even if Smt.Sneh Gupta or other brothers and sisters of Smt.Veena Nirwani had not signed the compromise dated 25.4.1998, it is still binding on them because Smt. Veena Nirwani had compromised in the appeal with their consent.

In support of this submission,the learned counsel for the petitioners made reference to the statement of Smt.Veena Nirwani who appeared as AW-2. She admitted in the cross-examination that a compromise settlement was arrived in Panipat in April, 1989,but she did not know its details. She also did not deny that in pursuance of that

compromise,all the cases were settled and withdrawn from different Courts. She only pleaded her ignorance about it. It was,therefore, submitted that Smt.Sneh Gupta was also a party to the compromise dated 25.4.1998.

It was further submitted that Smt. Sneh Gupta, respondent is debarred from filing the application for challenging the legality and validity of the compromise decree dated 25.4.1998 as she has drawn benefit from the said compromise in co-ordinate proceedings.

To appreciate this argument, it may be mentioned that Smt. Veena Nirwani had filed two civil suits against the petitioners. The first one was civil suit No.185 of 1989 decided in her favour on 30.10.1996 (Annexure P-1). The petitioners had filed Civil Appeal against that judgment (Civil Appeal No.254/33 of 1996) which was decided by the Court of Additional District Judge, Jagadhri by compromise dated 25.4.1998 by which the appeal was accepted and the suit filed by Smt.Veena Nirwani was dismissed as withdrawn and the petitioners were declared to be the absolute owners of the suit land measuring 835 Kanals 13 Marlas. Another suit was also filed by Smt. Veena Nirwani (Civil Suit No.303-C of 1992) in which Raghbir Singh (respondent No.29) was impleaded as a respondent. Besides Smt.Sneh Gupta, respondent No.5, other brothers and sisters of Smt.Veena Nirwani were also impleaded. The said suit was also decreed in favour of Smt. Veena Nirwani, her brothers and sisters under compromise dated 25.4.1998

(Annexure P-5). It was submitted that a comprehensive compromise was reached between the parties for ending all litigation. Since there were two proceedings pending between the parties in two different Courts, therefore, two separate compromise deeds were prepared and were filed in separate proceedings. The appeal was accepted on the basis of compromise. While the other suit of Smt.Veena Nirwani was decreed on the basis of said compromise dated 25.4.1998. It was only a compromise of give and take. It was also a compromise to end all the pending litigation.

Under the said decree passed in civil suit No.303-C of 1992, Smt.Veena Nirwani (plaintiff), her brothers and sisters including Smt.Sneh Gupta,respondent No.5 were declared to be the owners in possession of the property which was the subject matter of that suit except 1/3rd share as per compromise arrived at between Smt.Veena Nirwani (respondent No.1) and Raghbir Singh (respondent No.29).

Smt.Sneh Gupta had become owner on the basis of this compromise decree dated 25.4.1998 recorded in the Civil Suit. Thereafter, Smt. Sneh Gupta,her brothers and sisters had sold some property to Rajinder Kumar, Sunil Kumar and Meenu Dev vide sale deed dated 11.8.1998 (Exhibit R-9). Some other property was sold by her in favour of Amit Kumar vide sale deed dated 25.6.1999. Obviously, therefore, Smt. Sneh Gupta had derived benefit under the said compromise and,therefore, she was debarred from challenging the

legality and validity of the compromise dated 25.4.1998 arrived at by the petitioners with Smt.Veena Nirwani in the Civil Appeal No.254/33 of 1996.

In support of this submission, the learned counsel for the petitioners made reference to the judgment of the Hon'ble Supreme Court reported as **Amteshwar Anand Versus Virender Mohan Singh and others,** (2006) SCC 148. The question before their Lordships was stated in para No.3 which reads as under:-

> "The basic question to be decided in these appeals is whether the disputes between the parties were set at rest by a valid consent decree dated 25-8-1993 disposing of Suit No.63 of 1975 and Suit No.1495 of 1989."

The argument raised before the Hon'ble Supreme Court by the appellant therein has been reproduced in para No.18 which was almost similar as has been raised by the learned counsel for the contesting respondents. It reads as under:-

> "Before us, learned counsel appearing on behalf of AA has submitted that no notice was given to AA of the alleged family settlement or of the application for the compromise decree and she had no knowledge of the decree dated 25-8-1993. It was submitted that the compromise on which the decree was passed was not signed by AA and,therefore, was not binding on her under the provisions of Order 23 Rule 3

of the Code. It was further submitted that no right had been created under the second agreement in favour of VMS and that he had not been assigned AA's share in the suit properties. It was said that the third agreement dated 28-5-1993 was admittedly a record of an earlier oral agreement dated 1-5-1993 to which AA was not a party. It was contended that the purported assignment was not an assignment in law: first, because the agreement was a conditional one, namely, the rights of AA were to be transferred to VMS subject to VMS making payment;second,the assignment was not registered and finally, that the assignment was not pursuant to any leave granted to VMS under Order 22 Rule 10 of the Code of Civil Procedure. It is said that the omission to obtain such leave was deliberate in order to keep the passing of the compromise decree a secret from the appellants."

One of the reasons by which the Hon'ble Supreme Court did not agree with the appellant, therein, has been discussed in para No.28 as under:-

"Apart from this,there is the principle that courts lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds particularly when the parties have mutually received

benefits under the arrangement. Both the courts below had concurrently found that the parties had enjoyed material benefits under the agreements. We have ourselves also rescrutinised the evidence on record on this aspect and have found nothing to persuade us to take a contrary view. Furthermore, in this case the agreements had merged in the decree of the Court which is also excepted under sub-section (2)(vi) of Section 17 of the Registration Act,1908."

Since Smt. Sneh Gupta respondent had enjoyed material benefits under the compromise dated 25.4.1998 arrived at in collateral proceedings, therefore, she would be debarred from challenging legality or validity of the compromise dated 25.4.1998 arrived at in the other collateral proceedings. The compromise dated 25.4.1998 was comprehensive thereby bringing an end to the litigation between the parties. This presumption was in consonance with the admission made by Smt. Sneh Gupta, respondent in the cross-examination while appearing as AW-2 where she admitted that a compromise had taken place Panipat in April,1998 but she did not know its details. The compromise arrived at in Civil Appeal No.254/33 of 1996 was,therefore, a part of the compromise dated 25.4.1998 arrived at by Smt.Veena Nirvani in Civil Suit No.303-C of 1992.

It also appears unacceptable to this Court that Smt.Sneh Gupta had challenged the legality and validity of the compromise dated

25.4.1998 arrived at by Smt.Veena Nirwani with the petitioners in Civil Suit No.254/33 of 1996 on the plea that no authority was given to Smt.Veena Nirwani to compromise the matter with the petitioners as said Smt. Sneh Gupta had not challenged the authority of Smt.Veena Nirwani to compromise the matter with the petitioners or with Raghbir Singh in Civil Suit No.303-C of 1992. No doubt she challenges the compromise dated 25.4.1998 in Civil Appeal because it had withdrawn certain rights which came to be vested in Smt. Sneh Gupta vide judgment dated 30.10.1996 but she did not dispute the compromise dated 25.4.1998 arrived at in Civil Suit No.303- C of 1992 because it conferred certain legal rights on her. Smt. Sneh Gupta fails to understand that this compromise dated 25.4.1998 in Civil Suit No.303-C of 1992 was a part of comprehensive settlement. If the compromise dated 25.4.1998 in Civil Appeal No.254/33 of 1996 goes, the compromise dated 25.4.1998 in Civil Suit No.303-C of 1992 shall not survive. If the first was bad in law, so is the compromise in the Civil Suit under which Smt. Sneh Gupta has already derived benefit. She is,therefore, estopped from challenging the legality and validity of compromise dated 25.4.1998 arrived at in Civil Appeal No.254/33 of 1996 as she has availed benefits under the compromise dated 25.4.1998 in collateral proceedings and she sold the property as owner which right accrued to her under the compromise decree dated 25.4.1998. It is, therefore, held that Smt.Sneh Gupta had no right to challenge the

legality and validity of the compromise order dated 25.4.1998 passed in Civil Appeal No.254/33 of 1996.

The next submission advanced by the learned counsel for the petitioners was that Smt.Sneh Gupta had alleged collusion in the compromise order dated 25.4.1998. In her application dated 28.2.2002 (Exhibit P-6), Smt. Sneh Gupta took the plea that Smt. Veena Nirwani,respondent No.1 had colluded with the appellants (i.e. present petitioners) and she allegedly entered into an agreement dated 25.4.1998 with them by which she got dismissed her suit which was decreed on 30.10.1996. This version of Smt. Sneh Gupta is also unbelievable. As discussed above, Smt. Veena Nirwani and Smt.Sneh Gupta had joined hands in executing sale deeds dated 11.8.1998 (Exhibit R-9) and 25.6.1999 (Exhibit R-17) in selling the property which they got under the compromise dated 25.4.1998. If Smt. Veena Nirwani had colluded with the petitioners or if she was inimical to Smt.Sneh Gupta, then both of them would not have come on one platform and joined hands to sell the property. Therefore, it cannot be believed if Smt.Veena Nirwani had colluded with the petitioners to defeat the rights of Smt. Sneh Gupta, her brothers and sisters. Otherwise also, no evidence has been produced to prove collusion.

The next submission of learned counsel for the petitioners was that the application filed by Smt.Sneh Gupta was also barred by limitation. Compromise deed was passed on 25.4.1998 while the

application for setting aside the compromise was filed by Smt. Sneh Gupta on 28.2.2002. Thus, the application for setting aside the compromise deed dated 25.4.1998 was filed 4-1/2 years after it was passed. She had filed similar applications in the other two appeals on 6.11.2004.

This submission was countered by the learned counsel for the contesting respondents on the plea that compromise dated 25.4.1998 is void ab initio as Smt.Sneh Gupta, respondent No.5 was neither a party to this compromise nor she had authorised Smt. Veena Nirwani to compromise the matter with the petitioners. No notice was given to her counsel or to her and the appeal was got decided as compromised on 25.4.1998 by preponing the same from the date fixed. Therefore, the said compromise deed dated 25.4.1998 was void ab initio. Hence, the law of limitation did not apply to challenge it and the same could be challenged at any time. Reliance was placed on the judgments reported as **Punjab State and others Versus Sansar Preet Mandal and others,** 1990 Punjab Law Journal 322 and **Soran Gir Versus Manjit Singh and others,** 1987 P.L.J page 409 and it was submitted that the law of of limitation does not apply to challenge the orders which are void.

This submission is not acceptable to this Court. The settled law is that order may be void or voidable, a declaration has to be sought from a Court of law. Reference may be made to the judgment of

the Hon'ble Supreme Court reported as **Sultan Sadik Versus Sanjay Raj Subha and others,** 2004(1) RCR (Civil) page 767. The same view of law was taken by our own Hon'ble High Court reported as **Sawarna Ram Versus State of Punjab,** 2004(2) RCR (Civil) page25 in which it was held as under:-

> "It is a settled proposition of law that even void orders have to be challenged so that the same can be declared void. Even void orders continue to have effect till the same are declared non-est."

Even if the decree dated 25.4.1998 is void, the law of limitation is not abrogated. It was held by the Hon'ble Supreme Court in **State of Punjab and others v.Gurdev Singh and Ashok Kumar,** AIR 1992 Supreme Court 111 as under:-

> "It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

The Hon'ble Supreme Court was also pleased to observe in **Gurdev Singh's** case (supra) as under:-

> "The words "right to sue" ordinarily mean the right to seek

relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted".

It was also observed by the Hon'ble Supreme Court in **Gurdev Singh's** case (supra) as under:-

"First of all, to say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. S.3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Ss.4 to 24 be dismissed although limitation has not been set up as a defence. S.2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. S.2(j) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act."

Therefore, the theory that void orders can be challenged at

any time and these are not governed by law of limitation has just been deflated by the Hon'ble Supreme Court in **Gurdev Singh's** case (supra). Therefore, there is no merit in the submissions that the law of limitation does not apply to void orders.

However, to explain the delay, Smt. Sneh Gupta took the plea that she got the knowledge of the decree dated 25.4.1998 only on 7.2.2002 when she had made enquiry from her counsel and on that date she had come to know about the compromise decree dated 25.4.1998. Immediately thereafter she filed application on 28.2.2002 for setting aside the said compromise order. She also examined her Advocate Shri Lalit Gupta as AW-1 and herself appeared as AW-2.

This submission, however, is untenable. First of all, according to Smt. Sneh Gupta Civil Appeal No.254/33 of 1996 was fixed some where in July,1998 The said appeal was preponed to 25.4.1998 and decided. Smt.Sneh Gupta was represented by her counsel Mr.Lalit Gupta. He represented not only Smt.Sneh Gupta but her brothers and sisters namely respondent Nos.2 to 4 and 6 also. This has been disclosed by Shri Lalit Gupta, Advocate, District Courts, Jagadhri in his affidavit dated 29.11.2003 (examination-in-chief of Shri Lalit Gupta Advocate,AW-1). If the said compromise deed dated 25.4.1998 was passed by preponing the appeal fixed in July, 1998 her counsel Shri Lalit Gupta could have come to know in July 1998 itself which was the original date fixed in this appeal that this appeal was

preponed and compromise decree was passed on 25.4.1998. He could have informed Smt. Sneh Gupta respondent immediately thereafter. No reasons have been given by Shri Lalit Gupta for not deriving the knowledge of order dated 25.4.1998 in July, 1998 when the file was originally fixed and when he was supposed to appear in the Appellate Court. He has also not given the reasons why he did not inform his party after coming to know in July,1998 that the said appeal was preponed to 25.4.1998 and was decided as compromised.

Similarly, Smt. Sneh Gupta applicant has not given any reason as to why she could not contact her counsel after July, 1998 to know about the fate of the appeal. After all, she had engaged a counsel to watch her interest and,therefore, she was not to sleep over the matter once she had engaged the counsel. It appears to be highly improbable if Smt.Sneh Gupta contacted her counsel in July,2002 i.e. more than four years after the date fixed in the appeal to know about the fate of the appeal instituted against her in December, 1996 particularly when she knew that in the other suit, the parties had compromised on 25.4.1998. She should have been more curious to know about the fate of the appeal when the civil suit filed by Smt.Veena Nirwani to which she was also a respondent had been decided as compromised. Therefore, there is no merit in the version of Smt. Sneh Gupta, respondent that she had come to know for the first time in July, 2002 about the compromise order dated 25.4.1998 in Civil Appeal No.254/33 of 1996.

The third reason is that Smt. Sneh Gupta had executed sale deed dated 11.8.1998 (Exhibit R-9) and another sale deed dated 25.6.1999 (Exhibit R-17) in the company of Smt.Veena Nirwani. In other words, Smt.Veena Nirwani was a co-vendor with Smt. Sneh Gupta in both the sale deeds dated 11.8.1998 and 25.6.1999. Both are photographed together in the sale deed as vendors. They had become owners of this property on the basis of compromise dated 25.4.1998 arrived at in the other suit (civil suit No.303-C of 1992) decided on 25.4.1998. It does not appear to reason if Smt. Sneh Gupta had not enquired from Smt.Veena Nirwani as to what happened to the appeal filed against them by the petitioners in 1996. The obvious presumption is that Smt.Sneh Gupta had talked to Smt.Veena Nirwani and Smt.Veena Nirwani must have informed Smt.Sneh Gupta about the compromise dated 25.4.1998 arrived at in Civil Appeal No.254 of 1996.

For the reasons discussed above, the version of Smt. Sneh Gupta stands debunked that she got the knowledge of compromise decree dated 25.4.1998 in July,2002.

For the reasons stated above, it is held that the compromise was arrived at by the parties with common intention although it was signed only by Smt.Veena Nirwani, respondent No.1. It appears that since she alone was the plaintiff, therefore, the parties chose her alone to be the signatory on the compromise. The application was barred by

limitation. Smt. Sneh Gupta is estopped from challenging the compromise decree dated 25.4.1998 when she had availed the benefit under the compromise of the same date in co-ordinate proceedings.

This petition is accordingly accepted and the impugned judgment dated 29.9.2005 is set aside.

September 13 ,2006. (S. N. Aggarwal)
Jaggi Judge